

Justice, quoted

The complete independence of the courts of justice is peculiarly essential in a limited Constitution.

- **Alexander Hamilton**

It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each.

- **Chief Justice John Marshall**

Whatever disagreement there may be as to the scope of the phrase "due process of law" there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard.

- **Justice Oliver Wendell Holmes, Jr.**

The ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it.

- **Justice Felix Frankfurter**

Law matters, because it keeps us safe, because it protects our most fundamental rights and freedoms, and because it is the foundation of our democracy.

- **Justice Elena Kagan**

The job of a judge is to apply the law. And so it's not the heart that compels conclusions in cases. It's the law. The judge applies the law to the facts before that judge.

- **Justice Sonia Sotomayor**

Restriction on free thought and free speech is the most dangerous of all subversions. It is the one un-American act that could most easily defeat us.

- **Justice Thurgood Marshall**

The day you see a camera come into our courtroom, it's going to roll over my dead body.

- **Justice David Souter**

Attorneys for the Parties

For the Appellant

Robert Burkart, of Newburgh, IN, earned a BA in political science, *cum laude*, from Hanover College in 1988 and earned his JD from Emory University in 1992.

He has worked since then at Ziemer, Stayman, Weitzel & Shoulders, where he is a Partner, general and commercial litigation practice with numerous reported appellate decisions.

He is admitted to U.S. District Court for the Northern and Southern Districts of Indiana and the 7th U.S. Circuit Court of Appeals.

He and his wife, Beth, have three children: Ryan, attending Vanderbilt University; Emily, attending Furman University; and Matthew, at Reitz Memorial High School.

For the Appellee

Guy Relford is a Carmel native who attended DePauw University on an athletic scholarship and played varsity football. He graduated in 1980 with a bachelor's degree in psychology and political science.

He worked as a full-time law clerk at Bingham Summers Welsh & Spilman while attending Indiana University School of Law-Indianapolis, from which he graduated *cum laude* in 1983.

He was an adjunct professor of legal studies at Butler University from 1983-1986, while at the same time practicing as a litigation associate at Bingham Summers. Mr. Relford then joined the Dow Chemical Co. as a litigation attorney and remained there 23 years, ultimately attaining the position of Global Litigation Counsel.

He formed the Law Offices of Guy A. Relford, in Carmel, in 2009, focusing exclusively on firearms-related issues and the protection of constitutional rights. He has recently argued two other firearms-related cases to the Court of Appeals: *Dykstra v. the City of Hammond*, 985 N.E.2d 1105 (Ind. Ct. App. 2013) and *Redington v. State*, 992 N.E.3d 823 (Ind. Ct. App. 2013).

He has chaired multiple continuing legal education courses involving firearms law, including "Taking Aim: An Introduction to Indiana Firearms Law (ICLEF, 2013), and has addressed firearms law at both the ICLEF "Indiana Year in Review" and at the Indiana Law Update annual conference.

Mr. Relford is admitted to practice in the United States Supreme Court (where he was attorney of record in *Bates v. Dow AgroSciences LLC*, 544 U.S. 431 (2005)), the U.S. District Courts for the Northern and Southern Districts of Indiana and the State of Indiana.

He has been a NRA-certified firearms instructor since 1998; is the owner and chief instructor of Tactical Firearms Training, LLC, Indianapolis; and is the author of "Gun Safety & Cleaning for Dummies," (Wiley & Sons Publications, 2013).

Appeals on Wheels

The Court of Appeals hears oral arguments across Indiana to enable Hoosiers to learn more about the judiciary's indispensable role in Indiana government.

Since its 2000-2001 centennial, the Court has held more than 420 "traveling oral arguments" at law schools, colleges, high schools and other venues.

Today's event is the Court's 17th traveling oral argument this year.

The opinion in today's case will be posted under "appellate opinions" on the court's website, www.courts.in.gov.

SYNOPSIS

Passed in 2011, the Firearms Preemption Act (FPA), Ind. Code § 35-47-11.1-1 *et seq.*, generally prohibits local governments from regulating "the ownership, possession, carrying, transportation, registration, transfer, and storage of firearms, ammunition, and firearm accessories." I.C. § 35-47-11.1-2.

The FPA allows an individual "adversely affected by an ordinance" to bring suit to enforce the act. I.C. § 35-47-11.1-5. An individual is "adversely affected" if "the individual is or was subject to the ordinance" by being "physically present within the boundaries of the political subdivision for any reason." I.C. § 35-47-11.1-6.

On Sept. 10, 2011, Benjamin Magenheimer visited the Mesker Park Zoo and Botanical Garden, a city park in Evansville, with his wife and son. Magenheimer was openly carrying a handgun. At the time, the Evansville municipal code still contained a provision prohibiting firearms in city parks. An employee of the zoo spotted Magenheimer carrying the handgun and called the police. The police arrived and ordered Magenheimer to leave the zoo.

Magenheimer filed a complaint against the city shortly thereafter. Magenheimer's request for relief tracked the language of the statute, which allows for either actual and consequential damages or liquidated damages of treble attorney fees. I.C. § 35-47-11.1-7.

Evansville contends that by enforcing its ordinance against Magenheimer in violation of the FPA, it committed a tort. Therefore, Evansville argues that Magenheimer's claim is subject to the Indiana Tort Claims Act (ITCA), which applies to a claim or suit in tort. Ind. Code § 34-13-3-1 *et seq.* The ITCA does not define "tort."

The ITCA, in relevant part, provides that "a claim against a political subdivision is barred unless notice is filed with . . . (1) the governing body of that political subdivision; and (2) the Indiana political subdivision risk management commission . . . within one hun-

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Court of Appeals of Indiana

Hearing oral argument at

Tropicana Evansville

Wednesday, May 6, 2015 @ 11 a.m.



Evansville v. Magenheimer

82A01-1409-PL-398

On Appeal from Vanderburgh Circuit Court

The Honorable Carl A. Heldt, Judge

Synopsis, cont.

dred eighty (180) days after the loss occurs.” I.C. § 34-13-3-8.

Evansville argues that Magenheimer’s claim is barred for failure to serve proper notice.

Magenheimer claims that he is not making a tort claim, but rather, a purely statutory claim that did not exist before passage of the FPA. Consequently, he argues that his claim is not subject to the ITCA’s notice requirements.

Judge Baker, cont.

In 2011 he joined the Board of Trustees of Garrett-Evangelical Theological Seminary in Evanston, IL, where he serves on the board’s Academic Affairs committee.

Judge Baker was retained by election in 1992, 2002 and 2012. He and his wife have five children and – so far – nine grandchildren.

Appellate Court dockets move to Odyssey court records system.

Effective May 4, all Indiana appellate court dockets will be available through the state court records system, Odyssey. The change will add improved functionality to the appellate docket, including links to opinions and orders.

Appellate court records were previously maintained on a 28-year-old AS/400 system that cannot support the court’s planned move to electronic document filing.

More than 16 million trial court cases are already available on the Odyssey docket, at www.mycase.in.gov. The Indiana Tax Court was the first appellate court to employ Odyssey, having moved 3,000 cases there in December 2014. The Supreme Court and Court of Appeals will now move 104,000 cases to Odyssey.

Appellate case information is available in both dockets. Help topics provide useful information on how to search a case and read an appellate case docket.

Both dockets will be affected during the upgrade. The Clerk of Courts will receive and process filings, but Supreme Court and Court of Appeals case events that occur on May 1 will not be posted until May 4. Tax Court and trial court docket entries will not likely be affected.

Historical Glimpses: Every Docket Tells a Story

Indiana Appellate Court Reports, Vols. 1, 2, and 3, include the complete written opinions of several hundred cases decided by the Court of Appeals in its first two terms. Naturally, the legal issues before the court were many and varied. But the underlying facts, taken together, paint a vivid picture of Indiana’s economy and society circa 1891 – the same year James Naismith invented basketball.

Agriculture was an economic mainstay, and even city residents maintained livestock. In *The Noblesville Gas and Improvement Company v. Teter*, the court affirmed damages of \$60 against the gas company for the death of Teter’s cow after it fell into an open gas line trench.

The opinion notes that by county and city ordinance, “cows were permitted to run at large within the city (of Noblesville) within the day time.”

Railroads were frequent litigants. Vols. 1, 2, and 3 record 34 railroad-related appeals, many involving damages to livestock, but also other issues. In a disputed-fare case from Greene County, the court ruled for the railroad but admonished the company “if unnecessary force was used in expelling the appellee from the train.”

Vol. 1 also includes two cases involving **The Western Union Telegraph Co.** One of them, *Western Union v. Trumbull*, cited an 1885 law that anticipates current legal and policy arguments about **Internet neutrality**.

The relevant passage of the law said that telegraph companies “shall in no manner discriminate in rates charged, or words or figures charged for, or manner or conditions of service between any of its patrons, but shall serve individuals, corporations and other telegraphic companies with impartiality.”

Then as now, freight **domestic relations** occupied a significant share of the docket.

In *Story v. Story*, the court affirmed judgment against a father who’d been sued by his daughter for nonpayment of \$3 a week for house and farm work.

Marshall et al v. Bell involved a father’s promissory note for support and maintenance of a “bastard child.”

And in *Adams v. Main*, the court affirmed a trial court’s judgment that the appellant had alienated the affections of the appellee’s wife, even without proof of adultery. Such proof was not required, per the Appeals Court.

Contract disputes comprised a large part of the docket, too, and some of them include telling details about prevailing wages and prices.

In *Greene v. McIntire et al*, the court affirmed judgment against New York City grain merchants who had contracted to buy 20,000 bushels of “grade No. 2 red wheat” from a Knox County farmer. Price: \$14,891, or 74 cents per bushel. (In December 2013, March 2014 wheat deliveries were trading at \$6.39/bushel at the Chicago Board of Trade.)

Orme v. Cooper, a Floyd County case, reported the value of 571 pounds of harness leather as \$114.20, or 20 cents per pound.

Mr. Trumbull, the appellant in the *Western Union* case cited above, paid 25 cents for his telegram.

Another case put the value of a Warren County house, lot, furnishings, and various materials and repairs at \$531.85.

Vols. 1, 2, and 3 include just **18 criminal appeals** (all others assigned to the Supreme Court), many involving crimes of vice such as gambling, liquor violations and prostitution (referred to in one case as “a certain house of ill fame” in Valparaiso).

The court affirmed the trial court’s decision 13 times, or 72 percent.

Today’s Panel of Judges



**The Honorable
Melissa S. May**

**Vanderburgh
County**

Born in Elkhart, **Melissa S. May** studied criminal justice at Indiana University-South Bend before earning her law degree from Indiana University School of Law-Indianapolis in 1984. She then launched a 14-year career in private legal practice in Evansville that focused on insurance defense and personal injury litigation.

Judge May moved directly from private practice to the Court of Appeals in 1998 and was retained by election in 2000 and 2010. She later served as Presiding Judge of the Fourth District, which covers all of Indiana.

Judge May has long been active in local, state and national bar associations and foundations, with a particular focus on continuing legal education and appellate practice. At various times, Judge May has chaired the Indiana State Bar Association’s Litigation and Appellate Practice sections and was secretary to the Board of Governors.

As chair of the Indiana Pro Bono Commission, Judge May worked with 14 pro bono districts to train lawyers and mediators on how to assist homeowners facing foreclosure. She also serves on an Indiana Judicial Conference Committee that translated all civil jury instructions into “plain English.”

Judge May teaches trial advocacy at Indiana University McKinney School of Law and frequently speaks on legal topics to attorneys, other Judges, schools, and other professional and community organizations. She is special counsel to the American Bar Association’s Standing Committee on Attorney Specialization, on which she’s served since 2003.

In October 2011, Judge May received the Women in the Law Recognition Award from the Indiana State Bar Association for her dedication to helping women advance in the legal community.

She and her husband live in Morgan County.



**The Honorable
John G. Baker**

Monroe County

John G. Baker was named to the Court of Appeals in 1989, which makes him the longest-serving member on the current Court. He has served as Presiding Judge of the Court’s First District, which covers all of southern Indiana, and as Chief Judge of the Court from 2007-2010.

Judge Baker grew up along the Ohio River in Aurora, IN, but attended high school at Culver Military Academy in northern Indiana. He studied history at Indiana University-Bloomington, and later received his law degree from Indiana University School of Law-Bloomington.

He practiced law in Monroe County for many years before joining the Monroe County bench as first a county and later a Superior Court Judge. Diligently, he handled more than 15,000 cases in 13 ½ years on Monroe County benches, and has written more than 4,000 majority opinions for the Court of Appeals.

Judge Baker is greatly interested in the history, structure and organization of Indiana’s judicial branch of government. He regards Indiana judges not as remote figures who conduct abstract arguments, but as people fully engaged in the life of the law and their communities.

He has taught in college and law school and is active in local, state and national bar associations. In 2013, Judge Baker retired after 33 years of teaching at the School of Public and Environmental Affairs, Indiana University-Bloomington. He continues to teach during the Spring semester at the McKinney School of Law.

Judge Baker’s many community activities include his church, the YMCA and the Boy Scouts (where he attained Eagle Scout status as a youth).

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**The Honorable
Betty Barteau**

Marion County

Betty Barteau was born in Boonville, Warrick County, IN. She attended Indiana University Law School at Indianapolis, graduating with an L.L.B. in 1965. She was admitted to the Indiana Bar that same year. She served as Boonville City Judge, Deputy Prosecutor in Spencer and Warrick Counties, and Warrick County Attorney. She had a general law practice in Marion County from 1969 to 1974, before becoming a Marion County Superior Court Judge in 1975.

Judge Barteau served as a judge on the Court of Appeals of Indiana from January 1991 to April 1998. She left the court to assume the director position for the Russian American Judicial Partnership, a USAID program based in Moscow. She served in that position until 2003.

Judge Barteau has held memberships in various professional and community organizations and has received numerous awards and recognitions for her work in both areas:

Journal, Order of Coif, 1965. Indianapolis, Indiana State and American Bar Associations. National Association of Women Judges, Director 1979-81, 1989-91, University of Virginia, LL.M., 1995. Indiana University - Indianapolis, LL.B., Law Association of Family and Conciliation Courts, President 1980. National Judicial College Faculty, since 1978, Griswold Award for Teaching Excellence, 1993. Marion Superior Court Judge 1975-90; Indiana Employment Security Review Board 1970-72; private practice Warrick County 1965-69, Marion County 1969-74. Director of the Russian American Judicial Partnership, a USAID program based in Moscow, 1998-2003.

At the request of the Chief Judge of the Court of Appeals, she serves as a Senior Judge.